

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SANDRA WILKS,

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

No. 6:12-cv-01139-HZ

OPINION & ORDER

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HERNANDEZ, District Judge:

Sandra J. Wilks brings this action pursuant to the Social Security Act (the “Act”), 42 U.S.C. § 405(g), to obtain judicial review of the final decision of the Commissioner of Social Security (the “Commissioner”). The Commissioner determined Plaintiff was not disabled and denied her application for Supplemental Security Income benefits (“SSIB”) under Title XVI of the Act. Now before me is the Commissioner’s motion to dismiss [11] under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. For the reasons set forth below, the Commissioner’s motion to dismiss is GRANTED.

DISCUSSION

Plaintiff filed an application for SSIB on December 16, 2008. After her application was denied initially and upon reconsideration, Plaintiff timely requested a hearing before an Administrative Law Judge (“ALJ”). A hearing was held before ALJ Catherine R. Lazuran on March 1, 2011. In a decision dated March 25, 2011, the ALJ found Plaintiff was not disabled within the meaning of the Act. That decision became the final decision of the Commissioner on April 13, 2012, when the Appeals Council denied Plaintiff’s request for review. On June 25, 2012, Plaintiff filed this action challenging the Commissioner’s conclusion that she is not disabled. Defendant filed a motion to dismiss, arguing that Plaintiff filed her complaint more than 65 days after the Appeals Council denied her request for review as required under 42 U.S.C. § 405(g).

I agree with the Commissioner that Plaintiff failed to timely file this action and that her complaint must be dismissed. A claimant may seek judicial review of a final decision of the

Commissioner by bringing an action in federal court within 60 days of receiving notice of the decision. 42 U.S.C. § 405(g). The notice is presumed to be received within 5 days of the date it is mailed. 20 C.F.R. § 422.210(c). Upon a showing of good cause, the Appeals Council may extend the time for filing an action challenging the Commissioner's decision. Id.


The un rebutted evidence before me shows that notice of the Appeals Council's denial of Plaintiff's request for review was mailed to Plaintiff on April 13, 2012. The Appeal Council's notice informed Plaintiff that she was required to file a civil action within 65 days if she decided to pursue an action in federal court. Plaintiff does not respond to Defendant's motion to dismiss and suffice it to say, presents no evidence showing that she requested additional time to file a complaint or otherwise extended the time allowed for bringing this action. Instead, Plaintiff filed this action on June 25, 2012—more than 65 days after the Appeals Council denied her request for review. Under these circumstances, I conclude that this action must be dismissed because it was not timely filed as required under the Act.

CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss [11] is GRANTED.

IT IS SO ORDERED.

Dated this 6 day of March, 2014.


MARCO A. HERNANDEZ
United States District Judge